

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: CenturyLink Sales)
Practices and Securities) MDL No. 17-2795
Litigation) (MJD/KMM)
This Document Relates to:)
Civil File No. 18-296 (MJD/KMM)) Minneapolis, Minnesota
March 18, 2021
10:59 a.m.

BEFORE THE HONORABLE MICHAEL J. DAVIS
UNITED STATES DISTRICT COURT JUDGE

(MOTIONS HEARING)

Proceedings reported by court reporter; transcript
produced by computer.

APPEARANCES (Via Zoom) :

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P R O C E E D I N G S

IN OPEN COURT

(VIA ZOOM)

THE COURT: All right. Let's call this case, Gerri.

COURTROOM DEPUTY: In re: CenturyLink Sales and Practices Litigation, Civil Case No. 17-MD-2795.

Counsel, please state your appearances for the record.

MR. MUELLER: Good morning, Your Honor. Keil Mueller of Stoll Berne on behalf of plaintiffs.

THE COURT: Good morning.

MR. GIBBS: Good morning, Your Honor. Patrick Gibbs from Cooley on behalf of defendants.

THE COURT: Good morning.

Mr. Mueller, you may proceed.

MR. MUELLER: Thank you, Your Honor. On behalf of lead plaintiff, the State of Oregon, and additional named plaintiff Mr. Fernando Vildosola, my colleagues at Stoll Berne; our co-lead counsel, Bernstein Litowitz; liaison counsel, Lockridge, Grindal, Nauen; and I are pleased to present this proposed settlement to the Court.

The proposed agreement is the product of intense negotiation and represents the culmination of three and a

1 half years of work by plaintiffs and plaintiffs' counsel,
2 all on behalf of the class. We feel very good about what
3 we've been able to accomplish for the class in this case,
4 and we submit to Your Honor the preliminary approval of this
5 proposed settlement, pursuant to FRCP 23(e)(1), is fully
6 warranted on the basis that the Court will likely be able to
7 finally approve the proposed settlement.

8 As a preliminary matter, I would note that the
9 class for the proposed settlement is the same class Your
10 Honor previously certified in this case.

11 I also note that our arguments are, I believe,
12 well laid out in our brief, which is very thorough, but I
13 would like to touch on several main points. And, of course,
14 I'm happy at any time to answer whatever questions Your
15 Honor may have.

16 THE COURT: All right.

17 MR. MUELLER: So I'll start with a brief summary
18 of the course of litigation to date and then touch on the
19 material terms of the settlement, as well as the process by
20 which the parties arrived at the proposed settlement. I'll
21 also discuss the significant risks and challenges continued
22 litigation would pose, before finally reviewing the proposed
23 notice program and approval process.

24 As Your Honor is aware, four securities class
25 action Complaints were filed and ultimately consolidated in

1 this action. One was filed in the Western District of
2 Louisiana; the other three filed in the Southern District of
3 New York. The Southern District of New York cases were
4 transferred to the Western District of Louisiana before all
5 cases were transferred by the Judicial Panel on
6 Multidistrict Litigation to this Court for consolidation in
7 MDL 2795.

8 Plaintiffs filed their consolidated Complaint on
9 June 25, 2018. That Amended Complaint is a product of
10 thorough investigation that allowed plaintiffs to develop
11 allegations, including, among other things, allegations
12 based on information received from 20 former employees of
13 CenturyLink.

14 On July 30, 2019, this Court denied defendants'
15 motion to dismiss in full and the parties then engaged,
16 beginning in August 2019, in more than a year of intense
17 discovery, until reaching a tentative settlement in November
18 of 2020.

19 During that time plaintiffs prepared and served
20 initial disclosures, document requests, interrogatories,
21 more than 30 subpoenas, document subpoenas, on third
22 parties. The parties engaged in extensive correspondence
23 regarding discovery, including extensive negotiation of
24 search criteria, extensive discussion of various discovery
25 disputes, several of which required the intervention and

1 assistance of Magistrate Judge Menendez to resolve.

2 Ultimately defendants and third parties produced
3 over 2.3 million pages of documents. Plaintiffs produced
4 500,000 pages of documents. Plaintiffs defended four
5 depositions in this case, including the depositions of
6 Michael Viteri of the Oregon State Treasury and Brian DeHaan
7 of the Oregon Department of Justice, testifying as 30(b)(6)
8 witnesses on behalf of the State of Oregon. Mr. Vildosola
9 also was deposed, as was Dr. Michael Hartzmark, plaintiffs'
10 expert at class certification. Plaintiffs deposed
11 defendants' counsel, Bruce -- I'm sorry, not defendants'
12 counsel -- defendants' expert at class certification, Bruce
13 Deal.

14 In addition to the depositions that were taken and
15 defended in this case, plaintiffs' counsel obtained and
16 reviewed transcripts of 80 witnesses that were deposed by
17 the Minnesota State Attorney General in Minnesota's action
18 against CenturyLink's subsidiary, CenturyTel, in a related
19 action. We also obtained and reviewed discovery taken in
20 the consumer class action, including extensive confirmatory
21 discovery, which included a 30(b)(6) deposition of
22 CenturyLink.

23 The proposed settlement is a very good result for
24 the class, I would submit to the Court. It is a \$55 million
25 cash settlement, which is more than the total amount

1 recovered in the private and governmental actions brought on
2 behalf of consumers in related cases. It also represents
3 one of the top ten securities class action settlements ever
4 in the District of Minnesota.

5 Other material terms of the settlement include the
6 class, as I mentioned, is the same class previously
7 certified by the Court. The class will release defendants,
8 their insurers, and related persons. This is not a
9 claims-made settlement. There will be no reversion of funds
10 to defendants or their insurers.

11 There also, I should note for the Court, is, as is
12 common in securities class action settlements, a
13 confidential agreement regarding requests for exclusion,
14 which sets forth conditions under which CenturyLink can
15 terminate the agreement if requests for exclusion exceed a
16 certain threshold. Those agreements commonly are kept
17 confidential.

18 The settlement, we submit, is fair, reasonable,
19 and adequate. It was negotiated at arm's length by properly
20 incentivized and well-represented parties. We were assisted
21 in reaching this settlement by former District Court Judge
22 Layn Phillips, who already had served as mediator in the
23 consumer class action, was well acquainted with the facts of
24 this case, at least some of the underlying facts, and has
25 also served as mediator for numerous securities class

1 actions.

2 Judge Phillips oversaw an unsuccessful initial
3 in-person mediation in February of 2020. After that
4 unsuccessful initial mediation, the parties returned to
5 their litigation positions and engaged in further intense
6 litigation, until finally in October of 2020 the parties
7 re-engaged through direct negotiation, which was productive
8 but ultimately unsuccessful. The parties then again engaged
9 Judge Phillips as mediator and were able, ultimately through
10 a mediator's proposal, to reach a tentative resolution in
11 November of 2020.

12 If this case were to continue to be litigated,
13 plaintiffs and the class would face significant risks and
14 challenges.

15 First and foremost, I have to say that Mr. Gibbs
16 and his colleagues are extraordinarily capable adversaries.
17 They put on a very good defense for defendants in this case,
18 and we fully expect that they would have continued to do so
19 had the parties not reached a settlement.

20 Plaintiffs would face serious risks to establish
21 liability first regarding defendants' alleged false and
22 misleading statements. Defendants have argued throughout
23 this litigation, and certainly would have continued to
24 argue, that the statements alleged in the Complaint were
25 neither false nor material. They would have pointed out

1 that the company's auditors never required it to restate any
2 financial results. They would -- and they would have noted
3 that there was no SEC action or action by any other
4 governmental entity challenging defendants' statements to
5 investors.

6 The class also would have faced risks in
7 establishing scienter in this case. Particularly, the
8 plaintiffs would have been required to demonstrate that
9 defendants orchestrated, encouraged, or approved the alleged
10 improper sales and billing practices. And defendants, as
11 they have done throughout this litigation, would have
12 continued to point to the fact that the company had rules in
13 place prohibiting these alleged improper sales practices.
14 Defendants likely would have argued that they had no motive
15 to commit fraud, that individual defendants did not
16 personally benefit from the alleged fraud in this case. And
17 they also likely would have pointed to the fact that the
18 company's internal investigation purported to exculpate the
19 individual defendants from the very activities and conduct
20 that are alleged to have -- plaintiffs allege to have
21 occurred.

22 In addition, there are risks that would have been
23 faced as to loss causation and damages. Defendants would
24 have continued to argue that the stock price declines in
25 this case were driven by fear, uncertainty, and doubt,

1 influenced in particular by the Wells Fargo fake account
2 scandal as opposed to any revelation of fraud.

3 The defendants also would have continued to assert
4 a truth-on-the-market defense that investors in CenturyLink
5 were aware that sales and billing practices similar to those
6 alleged in this case are issues in the telecommunications
7 industry and are known to have been issues in the industry.

8 The recovery in this case, Your Honor, is more
9 than double the median recovery in class actions of this
10 size as a percentage basis, and we feel that this is a very
11 strong settlement given the facts and given the risks of
12 this case. We also --

13 COURT REPORTER: I just noticed that we lost
14 defense counsel. Mr. Gibbs is no longer on my screen.

15 MR. MUELLER: Shall I wait for Mr. Gibbs before I
16 continue?

17 THE COURT: Let's figure out what's going on here.
18 Just hold on, Mr. Mueller.

19 MR. MUELLER: Of course, Your Honor.

20 COURTROOM DEPUTY: He will probably try and get
21 back in again here shortly.

22 MS. LIGHTDALE: This is Sarah Lightdale from
23 Cooley. I'm happy to continue for the defendants if needed,
24 and I'm sure Mr. Gibbs will be back on shortly.

25 THE COURT: I want to wait for Mr. Gibbs.

1 MS. LIGHTDALE: Of course, Your Honor.

2 (Pause)

3 THE COURT: Ms. Lightdale, do you know whether or
4 not it was an emergency that he had to go to or is it just a
5 connection problem?

6 MS. LIGHTDALE: Your Honor, I believe he's having
7 some technical difficulties this morning. We had been
8 communicating about that before the hearing began. So I
9 suspect he'll be back on as soon as he can solve those.

10 THE COURT: All right. Thank you.

11 (Pause)

12 THE COURT: While I have got everyone on, a
13 numbers of lawyers on -- Lori, this will be off the record.

14 (Discussion off the record.)

15 MS. LIGHTDALE: Your Honor, this is Sarah
16 Lightdale. I understand from Mr. Gibbs that his Internet
17 service in his home has gone out and he is not sure when it
18 will come back up. Would it be acceptable to you for him to
19 dial into the audio?

20 THE COURT: He can dial into the audio, but I'm
21 going to ask you, Ms. Lightdale, to be the lead counsel on
22 this and we can proceed. Is that --

23 MS. LIGHTDALE: Of course, Your Honor.

24 THE COURT: Is that agreeable to you?

25 MS. LIGHTDALE: Absolutely, Your Honor.

1 THE COURT: All right.

2 MS. LIGHTDALE: And we apologize for the
3 inconvenience.

4 THE COURT: No, no, no. No, no. Please. I can
5 tell you that everyone has had this problem. Even in the
6 courthouse we've gone -- lost our signal. So it's nothing
7 new. We just have to deal with it, and no apologies are
8 necessary.

9 Mr. Mueller, why don't you continue.

10 MR. MUELLER: Thank you, Your Honor. The pause
11 gave me a chance to realize that I neglected to introduce --
12 I know we have multiple co-counsel on the phone and we
13 haven't introduced all of them. I did want to note,
14 however, that Brian DeHaan from the Oregon Department of
15 Justice is listening in as well today. The State of Oregon
16 has taken its role as lead plaintiff in this case incredibly
17 seriously and has kept this litigation on track. Mr. DeHaan
18 personally was involved at all stages of the mediation and
19 negotiation of the proposed settlement.

20 I wanted to note briefly that the plan --

21 THE COURT: Turn on your video so I can at least
22 acknowledge you.

23 MR. DeHAAN: Good morning, Your Honor. Brian
24 DeHaan, Oregon Department of Justice.

25 THE COURT: Turn on your video so I can see you.

1 MR. MUELLER: He has his video on. I don't know
2 if it's on your screen or not, Your Honor.

3 THE COURT: It's not. Well, that's okay. I
4 appreciate the efforts that you've put in.

5 Continue.

6 MR. DeHAAN: Thank you, Your Honor.

7 MR. MUELLER: Thank you, Your Honor.

8 Very briefly, the plan of allocation in the
9 proposed settlement treats all class members equitably
10 relative to each other. It will be based on each class
11 member's transactions in CenturyLink common stock and
12 7.6 percent notes during the class period. Each class
13 member will receive a portion of the settlement fund. That
14 is a *pro rata* share based on the class member's recognized
15 loss in its transactions in the securities at issue.

16 This allocation formula was developed by
17 plaintiffs' economic expert in consultation with counsel.
18 The formula is based on estimated amounts of price inflation
19 at various points during the class period. This is a type
20 of allocation that is routinely approved in securities cases
21 such as this. The recognized losses will be determined on
22 an investor-by-investor basis. And we believe -- we firmly
23 believe that this is a fully appropriate plan of allocation.

24 We also believe the notice program proposed in
25 this case is incredibly robust. We have proposed Epiq as

1 the claims administrator. I don't know if Your Honor is
2 familiar with Epiq, but Epiq is one of the leading claims
3 administrators in particular for securities class action
4 settlements. They have, among other things, handled over --
5 handled 54 of the hundred largest securities class actions
6 settlements since the PSLRA was enacted.

7 We do not believe -- or we believe that the
8 program we proposed for providing notice will provide notice
9 to as many potential class members as can possibly be
10 reasonably identified. The notice procedures are similar to
11 those in other securities class actions. We will provide
12 notice to holders of record and will work to make sure that
13 the notices get into the hands of the individual investors.

14 We will -- we have been and will continue to work
15 with defendants to ensure that we have the information
16 available to us and that the claims administrator is able to
17 obtain the information necessary to carry out the proposed
18 notice program.

19 And we firmly believe that the proposed program
20 provides the best notice practicable. It's typically --
21 similar notice programs have proven an extremely effective
22 method of providing notice.

23 We will have a website up and running should this
24 settlement be preliminarily approved. That website will go
25 live immediately.

1 Again, in all other respects the proposed notice
2 program has been used -- it is very similar to the notice
3 program that has been used in virtually every securities
4 class action settlement for the past 20 years.

5 So, Your Honor, without -- that's all I have. We,
6 again, feel very good about the settlement we have been able
7 to reach. This was a very hard-fought litigation with very
8 capable adversaries, and we feel very good about the result
9 that we have been able to present to the Court for the
10 Court's consideration.

11 THE COURT: If I can ask one question. If this
12 matter had gone to trial, what was the plaintiffs' estimate
13 of what the damages would have been?

14 MR. MUELLER: Yes, Your Honor. Well, obviously
15 there are a number of ways that that might have played out.
16 What is often referred to as plaintiffs' best day or had we
17 won on every single issue, we believe, having worked with
18 our expert, that the maximum damages recoverable in this
19 case would have been approximately 695 million.

20 THE COURT: All right. For the defense?

21 MR. GIBBS: Good morning again, Your Honor. This
22 is Patrick Gibbs. My apologies for the technical problems
23 at my end.

24 We don't really have much to add. I would just
25 echo that the case was extremely hard fought and would

1 continue to be hard fought. Our position on the merits
2 obviously hasn't changed. And I would echo counsel's point
3 that the negotiations were indeed arm's length and hard
4 fought as well, just like the underlying case.

5 THE COURT: All right. Thank you.

6 The Court will grant the preliminary approval.
7 The final approval date should be after August 16th, don't
8 you believe?

9 MR. MUELLER: By our calculations, Your Honor, it
10 could be as soon as July 6th to accommodate the schedule
11 that we've proposed, but an August date would also --
12 certainly would accommodate that schedule.

13 THE COURT: Well, I just want to make sure that we
14 have all the claims in. And isn't August 16th the last
15 date, or am I looking at the wrong date?

16 MR. MUELLER: The date that we had calculated --
17 we looked at this yesterday based on the proposed -- the
18 schedule that we have proposed and we thought that, based on
19 that schedule, everything would be ready for final approval
20 as early as July 6th. So --

21 THE COURT: Mr. Gibbs, is that your understanding
22 too?

23 MR. GIBBS: It is, Your Honor.

24 THE COURT: All right. Gerri?

25 COURTROOM DEPUTY: Yes, Judge.

1 THE COURT: Let's pull up a date here.

2 Clare, do you have any questions dealing with that
3 date? We talked about that this morning.

4 LAW CLERK: Judge, it just was scheduled by the
5 parties that the hearing would be before all of the claims
6 had been processed. If the Court wanted that to be
7 completed before the hearing, it would need to be a little
8 later than what was proposed by the parties.

9 THE COURT: Counsel, do you see any problems with
10 that or should we go with the July date?

11 MR. MUELLER: We believe the July date is
12 appropriate, Your Honor. I believe that we will -- but if
13 Your Honor is more comfortable with an August date, I think
14 that would be fine as well, but we believe that the July
15 date will -- everything that needs to occur for final
16 approval would occur before July 6th. However, it is true
17 that under our proposed schedule the claims filing deadline
18 would be after final approval. The date for opting out and
19 for objecting to the settlement would be before final
20 approval. So I just want to be clear that what we're
21 proposing would have the final approval hearing before all
22 of the -- before the claims deadline.

23 COURTROOM DEPUTY: Judge, I also want to point out
24 that we potentially may be in trial that first week in July.

25 THE COURT: Yeah, I am looking at that now. Let's

1 move it to July 20th. How does that look on everyone's
2 schedule?

3 MR. MUELLER: That looks good to plaintiffs, Your
4 Honor.

5 MR. GIBBS: That works for us, Your Honor.

6 THE COURT: All right. July 20th at 11:00 a.m.
7 for final approval.

8 MR. MUELLER: Thank you, Your Honor.

9 THE COURT: All right. Will you submit the
10 appropriate papers for us?

11 MR. MUELLER: Yes, of course.

12 THE COURT: All right. Anything else, Mr. Gibbs?

13 MR. GIBBS: No, Your Honor.

14 THE COURT: Gerri, is there anything further?

15 COURTROOM DEPUTY: No. Judge, you have covered it
16 all. Thank you.

17 THE COURT: Lori, were you able to get everything
18 on the record?

19 COURT REPORTER: Yes, I was, Judge. Thank you.

20 THE COURT: Thank you, everyone, for your efforts
21 in this matter. I know that you've -- it was hard fought
22 and it was at arm's length. I appreciate the mediator
23 getting involved in not only this case, but the other case
24 and really getting the parties to come together and come to
25 a good conclusion for both parties.

1 And so with that, I wish everyone safety and --
2 whether or not you're going to get a shot or not, it's up to
3 you, but I want everyone to stay safe and healthy, and
4 hopefully I'll be able to see you soon in court. All right.
5 Stay safe. Bye-bye.

6 MR. MUELLER: Thank you, Your Honor.

7 MR. GIBBS: Thank you, Your Honor.

8 THE COURT: We're adjourned.

9 (Court adjourned at 11:32 a.m.)

10 * * *

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12
13 I, Lori A. Simpson, certify that the foregoing is a
14 correct transcript from the record of proceedings in the
15 above-entitled matter.

16
17 Certified by: s/ Lori A. Simpson

18 Lori A. Simpson, RMR-CRR
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